UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BMADDOX ENTERPRISES LLC,

Plaintiff,

-against-

MILAD OSKOUIE, OSKO M LTD. and PLATINUM AVENUE HOLDINGS PTY, LTD.,

Defendants.

17 Civ. 1889 (RA)(HBP)

REPORT AND RECOMMENDATION

PITMAN, United States Magistrate Judge:

TO THE HONORABLE RONNIE ABRAMS, United States District Judge,

I. Introduction

Defendants Milad Oskouie, Osko M Ltd. and Platinum Avenue Holdings Pty, Ltd. move to dissolve or modify pursuant to Fed.R.Civ.P. 65(b)(4) an Order that was issued ex parte temporarily restraining their assets (the "Asset Restraining Order") (Notice of Motion, dated Aug. 16, 2017 (Docket Item ("D.I.") 47)). For the reasons set forth below, I respectfully recommend that the Asset Restraining Order be dissolved without prejudice to a renewed application by plaintiff.

II. Facts

A. Background

According to the complaint, plaintiff BMaddox Enterprises LLC creates and sells educational courses and materials through its website, <ffl123.com>, to assist members of the public in obtaining federal firearms licenses (Complaint and Demand for Jury Trial, dated Mar. 14, 2017 (D.I. 6) ("Compl.") ¶¶ 2, 29). Plaintiff owns the copyright for an educational text that is available for purchase on its website (Compl. ¶¶ 30-31, 35). Plaintiff has also filed applications for copyrights for the look and feel of its website as well as its underlying HTML code (Compl. ¶¶ 32-33). Additionally, plaintiff owns a trademark for "FFL123" for "licensing information services, namely, providing on-line information in the fields of firearms dealer licensure; and licensing consulting services in the field of firearms dealer licensure" (Compl. ¶ 38).

Plaintiff alleges that defendants, without authorization, gained access to plaintiff's Microsoft, Google Chrome, Dropbox, MailChimp, Rackspace and Wordpress accounts (Compl. ¶¶ 47-57). After obtaining such access, defendants allegedly accessed plaintiff's saved passwords, obtained and copied plaintiff's list of the email addresses of prospective customers,

altered the settings on plaintiff's website to effectively prevent it from appearing in response to Google and similar searches and obtained access to the website's contents (Compl. ¶¶ 51-52, 56-57).

Subsequently, defendants allegedly started a competing business using the domain name <flltrust.com> that contained essentially the same content as <flll23.com> (Compl. ¶¶ 58-59). On their website, defendants, in part, allegedly created and sold a "slavish copy" of plaintiff's copyrighted educational text, copied the look and feel of plaintiff's website and its HTML code and copied plaintiff's email marketing messages and sent copycat versions to plaintiff's actual and potential customers (Compl. ¶ 60).

B. Procedural History

Plaintiff commenced this action for copyright infringement, false advertising, trade secret misappropriation, deceptive trade practices and violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(g), and Digital Millennium Copyright Act (the "DMCA"), 17 U.S.C. § 512(f). Plaintiff seeks actual damages and defendants' profits from their allegedly illegal activity, or statutory damages, whichever is greater, as well as injunctive relief.

On March 15, 2017, plaintiff moved ex parte for, among other things, an Asset Restraining Order (Plaintiff's Ex Parte Application for a Temporary Restraining Order, Order to Disable Websites, Asset Restraining Order, Expedited Discovery Order, and Order to Show Cause for Preliminary Injunction, dated Mar. 15, 2017 (D.I. 22)). On March 16, Judge Abrams denied the application without prejudice to a renewed application "addressing the likelihood of dissipation of the claimed assets" (Order, dated Mar. 16, 2017 (D.I. 17)). Accordingly, plaintiff submitted a supplemental memorandum of law in accordance with Judge Abrams' Order (Supplemental Memorandum of Law in Support of Plaintiff's Ex Parte Application for a Temporary Restraining Order, Order to Disable Certain Websites, Asset Restraining Order, Expedited Discovery Order, and Order to Show Cause for Preliminary Injunction, dated Mar. 29, 2017 (D.I. 24) ("Supp. Mem.")). On May 30, 2017, Judge Abrams granted plaintiff's application to restrain all of defendants' assets pending a hearing on plaintiff's request for a preliminary injunction (Order, dated May 30, 2017 (D.I. 15)). In relevant part, the Order provided:

> 1. Defendants and any persons in active concert or participation with them who have actual notice of this Order shall be temporarily restrained and enjoined from transferring or disposing of any money or other of Defendants' assets until further order by this Court;

> 2. PayPal, Inc. ("PayPal"), Stripe, Inc. ("Stripe") and WePay, Inc. ("WePay") shall within two (2) business days of receipt of this Order:
>
> a. Locate all accounts and funds connected to Defendants or Defendants' websites; and;
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> b. Restrain and enjoin such accounts or funds from transferring or disposing of any money or other of Defendants' assets until further ordered by this Court;
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> 3. Any banks, savings and loan associations, payment processors, credit card companies, or other financial institutions for Defendants or Defendants' websites shall within two (2) business days of receipt of this Order:
>
> a. Locate all accounts and funds connected to Defendants or Defendants' websites; and;
>
> b. Restrain and enjoin such accounts or funds from transferring or disposing of any money or other of Defendants' assets until further ordered by this Court[.]

(Order, dated May 30, 2017 (D.I. 15), at 3-4).

By Order dated August 9, 2017, Judge Abrams consolidated the hearing on plaintiff's request for a preliminary injunction with a trial on the merits; thus, the Asset Restraining Order was extended until "trial is complete or this matter is otherwise resolved" (Order, dated Aug. 9, 2017 (D.I. 39)).

On August 16, 2017, defendants filed the present motion seeking to dissolve or modify the Asset Restraining Order (Notice of Motion, dated Aug. 16, 2017 (D.I. 47)).

III. Analysis

A. Applicable Legal Principles

"'On [a] motion to dissolve a[n] [ex parte] temporary restraining order, [plaintiff], the party that obtained the order, bears the burden of justifying continued injunctive relief.'" Gardner v. Weisman, 06 Civ. 5998 (WHP), 06 Civ. 5999 (WHP), 06 Civ. 6001 (WHP), 06 Civ. 6002 (WHP), 06 Civ. 6003 (WHP), 2006 WL 2423376 at *1 (S.D.N.Y. Aug. 21, 2006) (Pauley, D.J.), quoting SG Cowen Sec. Corp. v. Messih, 00 Civ. 3228 (HB), 2000 WL 633434 at *1 (S.D.N.Y. May 17, 2000) (Baer, D.J.), aff'd, 224 F.3d 79 (2d Cir. 2000); accord Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, 415 U.S. 423, 441 (1974); Taylor v. Taylor, No. 3:12-CV-0037 (LEK/DEP), 2013 WL 1183290 at *2 (N.D.N.Y. Mar. 21, 2013).[1]

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[1]Plaintiff argues that the burden is on defendants to demonstrate that there is a significant change in the facts or law or no risk of asset dissipation (Letter from Anderson J. Duff, Esq., to the undersigned, dated Aug. 18, 2017 (D.I. 52) ("Duff Letter"), at 2). However, this is the standard when a party is seeking to modify an injunction that was issued after a hearing at which all parties were afforded the right to be heard; the standard is not applicable to a motion that seeks to modify a temporary restraining order issued on an ex parte basis. See, e.g., Securities & Exch. Comm'n v. CKB168 Holdings, Ltd., No. 13-CV-5584 (RRM), 2017 U.S. Dist. LEXIS 96045 at *7, *12-*13 (E.D.N.Y. June 20, 2017) (Report & Recommendation); Lawsky v. Condor Capital Corp., 14 Civ. 2863 (CM), 2014 WL 3858496 at *3, (continued...)

Thus, plaintiff has the burden of demonstrating (1) a likelihood of success on the merits; (2) a likelihood that it will suffer irreparable harm if the temporary restraining order is not continued; (3) that the balance of hardships is in its favor and (4) that the relief is in the public interest. JBR, Inc. v. Keurig Green Mountain, Inc., 618 F. App'x 31, 33 (2d Cir. 2015) (summary order), citing Salinger v. Colting, 607 F.3d 68, 79-80 (2d Cir. 2010)[2]; Taylor v. Taylor, supra, 2013 WL 1183290 at *2.

Because irreparable harm is a "sine qua non" for a temporary restraining order or preliminary injunction, JBR, Inc. v. Keurig Green Mountain, Inc., supra, 618 F. App'x at 33; Johnson v. Miles, 355 F. App'x 444, 446 (2d Cir. 2009) (summary order), plaintiff must "first demonstrate that irreparable harm would be likely in the absence of a" temporary restraining order before the other requirements above are considered. JBR, Inc. v. Keurig Green Mountain, Inc., supra, 618 F. App'x at 33 (internal

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[1](...continued)
*5 (S.D.N.Y. Aug. 1, 2014) (McMahon, D.J.).

[2]Although JBR, Inc. v. Keurig Green Mountain, Inc., supra, 618 F. App'x at 31, concerned a preliminary injunction, "[t]he legal standards governing preliminary injunctions and temporary restraining orders are the same." C.D.S., Inc. v. Zetler, 217 F. Supp. 3d 713, 716 n.1 (S.D.N.Y. 2016) (Marrero, D.J.); accord Toray Int'l Am. Inc. v. Nakayama, 14 Civ. 3016 (GHW), 2014 WL 12543817 at *1 (S.D.N.Y. Apr. 29, 2014) (Woods, D.J.). Accordingly, cases addressing the former are equally applicable to cases involving the latter.

quotation marks omitted); accord Natera, Inc. v. Bio-Reference Labs., Inc., 16 Civ. 9514 (RA), 2016 WL 7192106 at *2 (S.D.N.Y. Dec. 10, 2016) (Abrams, D.J.); Marblegate Asset Mgmt. v. Education Mgmt. Corp., 75 F. Supp. 3d 592, 605 (S.D.N.Y. 2014) (Failla, D.J.) ("Irreparable harm is the single most important prerequisite for the issuance of a [temporary restraining order], and [i]n the absence of a showing of irreparable harm, a motion for a [temporary restraining order] should be denied." (second alteration in original; internal quotation marks omitted)). "The movant must demonstrate an injury that is neither remote nor speculative, but actual and imminent and that cannot be remedied by an award of monetary damages." Rodriguez ex rel. Rodriguez v. DeBuono, 175 F.3d 227, 234 (2d Cir. 1999) (per curiam) (internal quotation marks omitted); accord Grand River Enter. Six Nations, Ltd. v. Pryor, 481 F.3d 60, 66 (2d Cir. 2007) (per curiam). "Since monetary injury generally does not constitute irreparable harm, 'a plaintiff seeking damages must prove either that the defendant took steps to frustrate a future judgment or that the defendant is or imminently will be insolvent' in order to" show irreparable harm. Shaoxing Bon Textiles Co. v. 4-U Performance Grp. LLC, 16 Civ. 6805 (JSR), 2017 WL 737315 at *3 (S.D.N.Y. Feb. 6, 2017) (Rakoff, D.J.), quoting Sterling Ornaments Pvt. Ltd. v. Hazel Jewelry Corp., 14 Civ. 8822 (JSR), 2015 WL 3650182 at *1

(S.D.N.Y. June 10, 2015) (Rakoff, D.J.); accord Pivotal Payments, Inc. v. Phillips, No. CV 14-4910 (GRB), 2014 WL 6674621 at *3 (E.D.N.Y. Nov. 25, 2014) (a temporary restraining order is "appropriate only upon showing that the defendant intended to frustrate any judgment on the merits by transferring its assets out of the jurisdiction." (internal quotation marks omitted)); Pamlab, L.L.C. v. Macoven Pharm., L.L.C., 881 F. Supp. 2d 470, 480 (S.D.N.Y. 2012) (Francis, M.J.) ("[C]ourts that have found irreparable injury because of the risk that a judgment will not be satisfied have required a showing that the defendant is insolvent, is on the verge of insolvency, or has tried to transfer or conceal assets.").

"[W]hile a prima facie case of copyright infringement generally gives rise to a presumption of irreparable harm," this presumption applies to the consequences of a defendant's continued infringement; the prima facie case of infringement does not give rise to a presumption that a defendant's cash assets need to be restrained to prevent irreparable harm. See Kebapci v. Tune Core Inc., No. 15-CV-7141 (ENV)(ST), 2016 WL 6804919 at *4 (E.D.N.Y. Nov. 16, 2016). "[T]he facts and the presumption [would be] a mismatch." Kebapci v. Tune Core Inc., supra, 2016 WL 6804919 at *4.

B. Application of the Foregoing Legal Principles

Plaintiff's arguments in its initial application for the Asset Restraining Order can be broken down in two categories. Plaintiff first claimed that defendants have repeatedly misrepresented and hidden their ownership of <flltrust.com> and the products it offered, as well as defendants' location and identities,[3] and that the individual defendant has an "unrepentant history of harassing [plaintiff] with the intent of disrupting its business" (Memorandum of Law in Support of Plaintiff's Ex Parte Application for a Temporary Restraining Order, Order to Disable Websites, Asset Restraining Order, Expedited Discovery Order, and Order to Show Cause for Preliminary Injunction, dated Mar. 14, 2017 (D.I. 23), at 27; Supp. Mem., at 2-3, 7-8, 12). Second, plaintiff claimed that defendants are not located in the United States, do not have a bank account or other assets in the United States and can easily move money out of this country

[3]For example, plaintiff argued that defendants used a "WHOIS privacy protection service to obfuscate the true ownership of the Infringing Website" (Supp. Mem., at 2). It also argued that defendants listed false identifying information in its counter-notices to plaintiff's DMCA notices, which plaintiff claimed demonstrated that defendants "will not be punished for intentionally fraudulent statements that allow [them] to continue exploiting Plaintiff's works and defrauding consumers in the United States" (Supp. Mem., at 6-8).

through PayPal (Supp. Mem., at 2-4, 6, 9, 11-12). Based on the foregoing, plaintiff argued that (1) "[d]efendants believe they are 'above the law,' [and] any indication that they might face meaningful penalties in the United States would cause them to take any and all steps necessary to frustrate a court's enforcement of its mandated penalties, including secreting or transferring" assets, (2) "[s]ince Defendants freely and repeatedly perjure themselves,[4] it is safe to assume Defendants will remove assets from the United States through the simple click of a button in PayPal or a similar application" and (3) "[i]t is almost certain that Defendants, once realizing that they might have to face the music, would smash their stereos and remove their assets from the financial service providers used to siphon money to as yet unknown accounts or third parties" (Supp. Mem., at 1-2, 9, 13 (footnote added)).

Plaintiff raises four new arguments in opposing defendants' current motion. First, plaintiff argues that defendants

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[4]In support of this assertion, plaintiff argued that defendants filed DMCA counter-notices with false identifying information (Supp. Mem., at 6-8). Pursuant to Title 17 of the United States Code, Section 512(g)(3)(C), the counter-notice includes a statement, under penalty of perjury, that "the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled." The counter-notice also includes the subscriber's name, address and telephone number. 17 U.S.C. § 512(g)(3)(D).

used multiple aliases and email addresses for their payment processing accounts (Plaintiff's Reply to Defendants' Motion to Dissolve or Modify the Ex Parte Asset Restraining Order, dated Aug. 16, 2017 (D.I. 50) ("Pl.'s Reply"), at 1-2, 5). Second, plaintiff claims that the individual defendant perjured himself when he declared that the only accurate depiction of <flltrust.com> submitted by plaintiff appeared on pages 15 and 16 of the complaint (Pl.'s Reply, at 6-7, citing Declaration of Milad Oskouie in Opposition to Plaintiff's Application for a Preliminary Injunction, dated June 28, 2017 (D.I. 27) ("Oskouie First Decl.") ¶ 18) and when he declared that he had never heard of Jerome Kohlberg or used that name (Pl.'s Reply, at 7, citing Oskouie First Decl. ¶ 33). According to plaintiff, "Exhibit 2 [of plaintiff's Reply Memorandum of Law] shows that [the individual defendant] used that name to open a PayPal account" (Pl.'s Reply, at 7). Third, plaintiff argues that defendants have commingled assets from sales made on multiple websites (Pl.'s Reply, at 2-5). Fourth, plaintiff complains that defendants are guilty of undue delay, having waited two and one-half months after the Asset Restraining Order was issued before making this motion (Duff Letter, at 2).

Plaintiff has failed to demonstrate imminent, irreparable harm if the Asset Restraining Order were dissolved. As a

threshold matter, plaintiff has offered no evidence in support of its claim of irreparable injury. Plaintiff has not submitted any affidavits or other material of evidentiary weight to support its allegation of irreparable injury. Rather, all it offers are counsel's unsworn statements in briefs and correspondence. Such submissions are not evidence. "An attorney's unsworn statements in a brief are not evidence." Kulhawik v. Holder, 571 F.3d 296, 298 (2d Cir. 2009) (per curiam); accord Immigration & Naturalization Serv. v. Phinpathya, 464 U.S. 183, 188 n.6 (1984); Sanchez v. New York Kimchi Catering, Corp., 16 Civ. 7784 (LGS), 2017 WL 2799863 at *4 (S.D.N.Y. June 28, 2017) (Schofield, D.J.); Markowitz Jewelry Co. v. Chapal/Zenray, Inc., 988 F. Supp. 404, 407 (S.D.N.Y. 1997) (Kaplan, D.J.); see Mei Shu Cai v. Holder, 524 F. App'x 752, 754 (2d Cir. 2013) (summary order).

Moreover, even if I credit plaintiff's unsworn assertions, they are insufficient to demonstrate that plaintiff will likely suffer irreparable harm if defendants' assets are not restrained. First, while defendants' efforts to conceal their identities and location -- as claimed in plaintiff's initial application -- are troubling, there is no evidence that defendants did so in an effort to frustrate a judgment rather than hide their alleged infringement. See footnote 3, supra. "[A] court may not rest its finding of the likelihood of future harm

solely on . . . past . . . conduct, and [plaintiff] relies almost entirely on evidence of [defendants'] past fraudulent conduct in" the infringement context. Toray Int'l Am. Inc. v. Nakayama, supra, 2014 WL 12543817 at *1 (internal quotation marks and citation omitted); see also Wareh v. Lesperance, 16 Civ. 6210 (JGK), 2016 WL 5477784 at *6 n.5 (S.D.N.Y. Sept. 29, 2016) (Koeltl, D.J.) (rejecting argument that "injunctive relief is warranted because the defendant, through his allegedly fraudulent course of conduct [before the commencement of the action], has demonstrated that he is likely to conceal . . . assets to render himself judgment proof" and noting that cases cited by plaintiff were distinguishable because "[e]ach case involved the substantial risk of the defendant evading an actual money judgment, as opposed to a hypothetical one, or other extreme circumstances not present here"). Absent any evidence that defendants either have secreted assets or are about to do so in an effort to frustrate a future judgment, this argument fails.[5]

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[5]In addition, defendants have appeared in this action and asserted counterclaims. Stated simply, they are not currently hiding or evading the jurisdiction of the Court. Cf. JSC Foreign Econ. Ass'n Technostroyexport v. International Dev. & Trade Servs., Inc., 295 F. Supp. 2d 366, 390 (S.D.N.Y. 2003) (Koeltl, D.J.) (declining to find irreparable harm where the defendants were "subject to continuing scrutiny in the course of discovery in [the] case" and were in the court's jurisdiction, and there was no "suggestion that they would flee or would not be subject

(continued...)

Although plaintiff now argues that defendants used aliases for their payment processing accounts as well, plaintiff has offered only one piece of "evidence" demonstrating this, namely a print-out of a PayPal account for "Jerome Buddy" with one mailing address belonging to "Jerome Kohlberg" (Pl.'s Reply, Ex. 2). This "evidence" still does not establish that defendants have taken steps or will imminently take steps with the specific intention of frustrating a future judgment. The print-out of the account shows that the account was created in July 2016, before plaintiff commenced this action (Pl.'s Reply, Ex. 2); thus, there is little reason to infer that defendants created the alias to frustrate a judgment.[6]

To the extent plaintiff relies on the individual defendant's alleged perjury in opposing the Asset Restraining Order, including his statement that he has never heard of Jerome Kohlberg, such an argument fails because the allegedly false

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[5](...continued)
to the continuing orders of the Court").

[6]Defendants' use of multiple email addresses does not establish a likelihood that defendants will secrete assets to frustrate a future judgment. There is no logical connection between having multiple email addresses and an intent to defraud potential creditors.

statements do not bear on plaintiff's ability to collect a judgment or suggest an intent to hide assets.[7]

Second, plaintiff's argument that defendants can use PayPal, or have used PayPal, to secrete assets fails. Plaintiff has not shown that defendants have transferred assets from payment processors such as PayPal to foreign banks in order to frustrate a future judgment, as opposed to transferring assets in the normal course of defendants' businesses.[8] See, e.g., Sterling Ornaments Pvt. Ltd. v. Hazel Jewelry Corp., supra, 2015 WL 3650182 at *1 (use of money to finance purchase of a home did not reflect an effort to frustrate a judgment); Fox Ins. Co. v. Envision Pharm. Holdings, Inc., No. CV-09-0237 (SJF)(ARL), 2009 WL 790312 at *8 (E.D.N.Y. Mar. 23, 2009) ("Envision has not established that plaintiffs have completed any actions with the specific intent to frustrate any judgment in favor of Envision on its counterclaims . . . ." (emphasis added)).

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[7]If plaintiff believes that the individual defendant committed perjury and can prove it, its remedy lies in a motion for sanctions, not in a temporary restraining order freezing defendants' assets.

[8]In addition to the allegedly infringing website, defendants operate another website that offers goods and services for sale (Declaration of Milad Oskouie in Support of Defendants' Motion to Dissolve or Modify the Ex Parte Asset Restraining Order, dated Aug. 16, 2017 (D.I. 48) ("Oskouie Third Decl.") ¶ 8).

Third, although plaintiff argued that it is "safe to assume," or that it is "almost certain," that defendants would remove assets from the United States (Supp. Mem., at 9, 13), such arguments are little more than speculation and demonstrate, at most, that there is a possibility that defendants would secrete assets to frustrate a judgment. As stated above, a plaintiff seeking to continue a temporary restraining order must prove more than a mere possibility of irreparable harm; instead, a plaintiff must demonstrate a likelihood of irreparable harm. JSG Trading Corp. v. Tray-Wrap, Inc., 917 F.2d 75, 79 (2d Cir. 1990).

Fourth, plaintiff's "proof" in support of its contention that defendants are commingling assets is extremely weak. Plaintiff first attaches screen shots of purchases it claims it made from <TheUniTutor.com>, another of defendants' websites (Oskouie Third Decl. ¶ 8), and <flltrust.com>, which purport to show that the same email address was used to process plaintiff's payments (Pl.'s Reply, at 3-4). However, there is no screen shot showing that plaintiff actually made a purchase from <TheUniTutor.com>. Second, plaintiff attached a summary of defendants' Stripe accounts, which showed the same email address for three of the accounts (Pl.'s Reply, at 2 & Ex. 4). However, these are separate Stripe accounts, and plaintiff has presented no evidence that that one email address is connected to the same

bank account. Moreover, even if defendants are commingling assets, without more, that does not demonstrate that defendants are secreting assets to frustrate a future judgment or will imminently do so.

Finally, although defendants did wait one and one-half months to move to dissolve or modify the Asset Restraining Order, a rational explanation for the delay is that defendants assumed the Asset Restraining Order was temporary. The temporary restraining order was extended on August 9, 2017, and defendants brought their motion only one week later. In addition, if plaintiff is attempting to mount some sort of laches argument in response to defendants' motion, plaintiff has failed to establish an essential element of laches -- prejudice as a result of the delay. In re Gucci, 197 F. App'x 58, 60 (2d Cir. 2006) (summary order); accord Maloul v. New Colombia Res., Inc., 15 Civ. 8710 (KPF), 2017 WL 2992202 at *6 (S.D.N.Y. July 13, 2017) (Failla, D.J.); Cooley v. Penguin Grp. (USA) Inc., 31 F. Supp. 3d 599, 612 (S.D.N.Y. 2014) (Kaplan, D.J.).

In short, plaintiff does

> not point to any evidence tending to show that [defendants] [are] planning on removing [their] assets in an effort to frustrate any [judgment], or that [defendants] [have] been hiding or secreting away assets . . . .

> . . . At best, [plaintiff] [has] demonstrated that there exists some chance that [it] may not be able to collect on judgment in [its] favor, falling far short of establishing irreparable harm.

Local 1303-362 v. KGI Bridgeport Co., No. 3:12cv1785 (AWT), 2014 WL 555355 at *3 (D. Conn. Feb. 10, 2014) (emphasis in original; footnote omitted). While plaintiff's arguments may have been sufficient to justify temporary relief on an ex parte basis, they are no longer sufficient now that defendants have had an opportunity to be heard.

Because plaintiff has not met its burden of demonstrating irreparable harm, it is not necessary to consider whether plaintiff has demonstrated a likelihood of success on the merits, whether the balance of hardships is in its favor or whether the relief is in the public interest. See Rodriguez ex rel. Rodriguez v. DeBuono, supra, 175 F.3d at 234 ("In the absence of a showing of irreparable harm, a motion for a [temporary restraining order] should be denied.").[9]

IV. Conclusion

For the foregoing reasons, I respectfully recommend that defendants' motion to dissolve the Asset Restraining Order

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[9]There is also no need to reach defendants' alternative argument that dissolution or modification of the Asset Restraining Order is justified because it is too broad.

be granted without prejudice to a renewed application by plaintiff supported by evidence that defendants have secreted, or will likely secrete, assets with the intention of frustrating a future judgment.

V. Objections

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from receipt of this Report to file written objections. See also Fed.R.Civ.P. 6(a). Such objections (and responses thereto) shall be filed with the Clerk of the Court, with courtesy copies delivered to the Chambers of the Honorable Ronnie Abrams, United States District Judge, 40 Foley Square, Room 2203, and to the Chambers of the undersigned, 500 Pearl Street, Room 1670, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Abrams. FAILURE TO OBJECT WITHIN FOURTEEN (14) DAYS **WILL** RESULT IN A WAIVER OF OBJECTIONS AND **WILL** PRECLUDE APPELLATE REVIEW. Thomas v. Arn, 474 U.S. 140, 155 (1985); United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v.

Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 57-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 (2d Cir. 1983) (per curiam).

Dated: New York, New York
September 8, 2017

Respectfully submitted,

HENRY PITMAN
United States Magistrate Judge

Copies transmitted to:

All counsel of record